IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 27772 of 1997

Between:

Magham Sampath Kumar, S/o M. Chinna Subbarayudu Chetty, Dealer Hindusthan Petroleum Corporation Ltd., R/o M.H.School Road, Nandyal, Kurnool District.

..... PETITIONER

AND

1 The Joint Collector, Kurnool,
2 The General Manager, Hindusthan Petroleum Corporation Ltd., 8, Shoorji Vallabhdas Marg, BOMBAY-38.
3 The Chief Regional Manager, H.P.C.Ltd., Sarojini Dev. Road, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly a writ in the nature of mandamus declaring the action of respondent in not resuming supplies of Kerosene in spite of his having a valid licence to carry on business in Kerosene and being entitled to the rights of dealership under respondents 2 and 3 after his father's death, as illegal arbitrary and void and for a consequential direction to direct the respondents to resume supplies of Kerosene to the petitioner forthwith.

Counsel for the Petitioner: MR.M.S.R.SUBRAHMANYAM

Counsel for the Respondent No.1: None appeared

Counsel for the Respondent Nos.2 and 3: MR.K.SRINIVASA MURTHY

The Court made the following :

ORDER:

Heard the learned counsel for the petitioner and the learned counsel for respondent Nos.2 and 3.

By this writ petition, the petitioner seeks to declare the action of respondent Nos.2 and 3 in not supplying him kerosene after his father's demise in spite of his having a valid licence to be a dealer, and consequently to direct respondent Nos.2 and 3 to resume supplies of kerosene to him.

The petitioner states that his father late China Subbarayudu Chetty was a wholesale dealer in kerosene at Nandyal by virtue of a dealership agreement dated 24-11-19970 entered into with the Caltex (India) Ltd., which was amalgamated with Hindustan Petroleum Corporation Ltd., (HPCL) in 1978, whereby he continued to be the dealer of HPCL till his death on 22-12-1987. The petitioner claims to have a licence under the A.P. Petroleum Products (Licensing and Regulation) Order, 1980. The petitioner states that by virtue of a Will dated 20-2-1979 executed by his father bequeathing the dealership rights in kerosene oil under the dealership agreement in his favour, he after the death of his father succeeded to the dealership rights and became entitled to continue as a wholesale dealer of kerosene under HPCL. His grievance is that though he made representations dated 25-3-1996 and 30-8-1997 requesting the HPCL authorities to start supply of kerosene to him, respondent Nos.2 and 3 have not made any supplies. Hence, the writ petition.

A counter affidavit is filed on behalf of respondent Nos.2 and 3. It is stated that the original dealer i.e. the father of the petitioner vide letter dated 15-4-1983 advised the District Collector, Kurnool that he stopped uplifting kerosene from the year 1975 due to his old age and prolonged sickness, and thus the dealership was defunct from

1975 and with his death on 22-12-1987 the agreement ceased to exist. It is stated that the dealership agreement, which is a commercial contract, is not heritable, and therefore the alleged bequest in favour of the petitioner, is not binding on the Corporation. It is stated that on verification it was found that the original dealer left behind his wife who also died on 26-02-1995 and four sons, and the petitioner has not filed any 'no objection' certificates from his brothers regarding the allotment of dealership agreement. It is also stated that the petitioner is already having a retail outlet in his name as the sole proprietor with a sales volume of 16 kl MS and 188 kl HSD p.m. It is stated that the petitioner has no right to claim dealership. Thus, respondent Nos.2 and 3 pray to dismiss the writ petition.

Having regard to the averments made in the counter-affidavit filed on behalf of respondent Nos.2 and 3, the claim of the petitioner that he became entitled to continue as a wholesale dealer of kerosene at Nandyal under HPCL by virtue of a Will said to have been executed by his favour, cannot be sustained. Further, the rights of a legatee under a Will cannot be decided in a proceeding under Article 226 of the Constitution of India. However, it is open for the petitioner to avail civil law remedies for enforcement of his rights under the alleged Will, if he so intends.

With the above observations, the writ petition is dismissed. No costs.

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N.V. RAMANA, J

Date: 05-4-2005

Svv

..... REGISTRAR

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SECTION OFFICER

To

1 The Joint Collector, Kurnool,
2 The General Manager Manager, Hindusthan Petroleum Corporation Ltd., 8, Shoorji Vallabhdas Marg, BOMBAY-38.
3 The Chief Regional Manager, H.P.C.Ltd., Sarojini Dev. Road, Secunderabad.

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